IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPEAL NO.94 OF 1995

Pandit Dhondiba Khule
Age 31 Years, Occupation
Rickshaw Driver,
R/o at 96/898 Gokhalenagar,
Pune 411 016 ..Appellant
(Org. Accused)

Vs.

The State of Maharashtra ..Respondent

Advocate for the appellant absent.
Dr. F.R. Shaikh, APP for Respondent-State.

CORAM: S.S. PARKAR & ANOOP V. MOHTA, JJ.

Date : February 04, 2005.

ORAL JUDGMENT (PER S.S. PARKAR,J.):

1. This appeal is filed challenging the Judgment and Order dated 6th March, 1995 delivered by the Additional Sessions Judge, Pune convicting the appellant for the offence of murder under Section 302 of IPC and sentencing him to RI for life and to pay a fine of Rs.100/- in default RI for three months in Sssions Case No.50 of 1993.

2. Briefly narrated the prosecution case is as under:-

. The appellant was prosecuted for the offences under Sections 498-A and 302 of IPC for the murder of his own wife by burning her. The couple was residing in Janawadi, Pune with their children. The incident took place on the night of 4/4/1992 between 10.30 p.m. and 11 p.m. There was quarrel between the couple as deceased Sadhna, the wife of the appellant, had sent their elder daughter Trupti in the house of her own mother who was staying in the neighbourhood. The appellant wanted to go and bring their daughter back to his house from his mother-in-law's house. Sadhna, with a view to prevent the appellant from doing so, poured kerosene on her person, probably making show that if he did so she would commit suicide. Appellant immediately threw a burning matchstick on her, as a result of which Sadhna was in blaze. Sadhna started shouting for help. She called her neighbour P.W.3 Kishor Khedekar for help. The other neighbours also collected there. Appellant himself tried to extinguish the fire on the person of Sadhna which caused burn injuries on his hand and face. Sadhna was immediately removed to the hospital by the appellant and the neighbours. She was carried in an autorickshaw to the hospital. In the autorickshaw appellant begged for pardon of his wife and persuaded her not to implicate him and to offer the pretext that

she caught fire from the stove while cooking the food.

3. When she was taken to the hospital police were informed by the hospital authorities. Police then arranged for recording her statement by a Special Judicial Magistrate. She gave the statement to the Magistrate that she got the burn injuries accidentally while cooking food on the stove on the night of the incident. Thereafter on 8/4/1992 she wanted to change her statement and, therefore, the police again arranged for services of the Special Judicial Magistrate. The same Magistrate i.e. P.W.2 Dahiwal again recorded her statement on 8/4/92 in which she stated that when she poured kerosene on her person with a view to prevent the appellant from going to her mother's house to bring back their daughter, appellant set her on fire by throwing a burning matchstick on her person and thereafter he pleaded her to pardon him and told her to state that she caught fire accidentally while preparing food on the stove. After recording the second statement by the Special Judicial Magistrate, the police also recorded a detailed statement of Sadhna in the hospital itself. The crime was then registered for offences under Sections 307 and 498-A of IPC. After she succumbed to her burn

injuries on 1/6/1992 the crime was converted for an offence under Section 302 of IPC. The statements of the neighbours and other witnesses were recorded by the police during the course of investigation. The spot panchanama was recorded earlier in the morning of 5/4/1992 itself, even though the police had not registered the crime as the earlier statement of Sadhna was exculpatory. After completion of the investigation, charge-sheet was filed and the case was committed to the Sessions Court.

4. Before the Sessions Court, charges were framed against the appellant for offences under Sections 302 and 498-A of IPC, to which he pleaded not guilty. On behalf of the prosecution 10 witnesses were examined. P.W.1 is Dr. Shirish Medhekar, who attended to the patient in the Ratna Memorial Hospital and had made endorsement about consciousness and fitness of the patient to give statement to the Special Judicial Magistrate. P.W.2 is Special Judicial Magistrate Subhash Dahiwal who had recorded the statement of Sadhna twice, first on the night of the incident which is Exh.15 and thereafter on 8/4/1992 i.e. Exh.17. P.W.3 is neighbour Kishor Khedekar, who had heard the quarrel between the couple. P.W.4 is Narayan Chalekar

who acted as panch to the spot panchanama Exh.26 but had turned hostile. P.W.5 is Geeta Redekar, the mother of deceased Sadhna. P.W.6 is Dattatraya Ghume who acted as panch to the spot panchanama but had turned hostile. P.W.7 is Dr. Jyoti Bhagwat who had made endorsement about consciousness and fitness of Sadhna to give second statement to the Special Judicial Magistrate. P.W.8 is Head Constable Jagdale who had recorded Sadhna's statement and registered the crime and had also drawn the spot panchanama Exh.26 and proved the same. P.W.9 is Investigating Officer Subhash Kapare. P.W.10 is Dr. Vaibhavee Sonekar who conducted post mortem examination on the dead body. The defence of the accused was of denial. He has not offered any explanation except by saying that theirs was a love marriage which was disliked by his mother-in-law and, therefore, she and others had given evidence against him.

5. After going through the evidence on record, the Addl. Sessions Judge, Pune by his impugned judgment and order had acquitted the appellant of the offence under Section 498-A of IPC but convicted him for offence under Section 302 of IPC and sentenced him to undergo RI for life and to pay a fine of Rs.100/-

in default to suffer further RI for three months. The said order of conviction and sentence recorded against the appellant is under challenge in this appeal.

6. This appeal was on board since 6/9/2004. This week the matter was at Sr.No.5 on the final hearing board. Though the appellant had engaged advocate, the advocate had not cared to remain present on any dates right from 10/1/2005 before this bench. This week the matter was called out on 1st of February, 2005, but no one appeared in the matter on behalf of the appellant. The matter was called out on subsequent dates also but no one appeared on behalf of the appellant. Ultimately, the appeal was taken up for hearing on 3/2/2005 when the earlier matters were disposed of or adjourned. Even on 2/2/2005 we had to take up matter at Sr.No.9 and on 3/2/2005 we had heard the matter at Sr.No.6 and disposed of those appeals after hearing them. We had, therefore, no alternative but to take up this appeal for hearing yesterday i.e. 3/2/2005 in the absence of any pair of advocates available in any of the subsequent matters. Though the hearing of the matter was over yesterday, we had stood over this appeal upto today to find out whether the advocate for the appellant turns up in the matter. However, today

also no one appears on behalf of the appellant. We, therefore, proceeded to hear the appeal ex parte in accordance with the law laid down by the three Judge Bench of the Supreme Court in the case of Bani Singh vs. State of U.P. reported in **1996 Cri.L.J. 3491 (S.C.)** and dispose of the same on merits after hearing the learned APP fully and perusing the entire record with the assistance of the APP.

7. As no one had appeared on behalf of the appellant, though an advocate was engaged by the appellant, we even perused the memo of appeal and the grounds of appeal apart from perusing the entire record of the appeal. After going through the entire record we are satisfied that the prosecution has made out a case against the appellant for causing the death of his wife Sadhna by setting her on fire on the night of 4/4/1992. Considering the circumstances in which the offence was committed by the appellant, we are, however, of the view that the offence committed by the appellant may not be culpable homicide amounting to murder which is punishable under Section 302 of IPC but it appears that the appellant was suddenly provoked by the conduct of the wife in pouring kerosene on her person when there was quarrel between the couple over the issue of sending their daughter

Trupti to the house of wife's mother for sleeping. Seeing that wife had poured kerosene on her person but would not set herself on fire, the appellant appears to have been suddenly provoked to set her on fire by throwing a burning matchstick on her person and that is why we are of the view that the appellant is guilty of offence of culpable homicide not amounting to murder punishable under Section 304 of IPC for the reasons which follow. Of course, in order to apply the provisions of Section 304 it would be necessary to first of all find out whether the appellant was responsible for causing the death of his wife Sadhna on the night of the incident.

8. There are two statements of deceased Sadhna on record, both of which were recorded by one and the same Special Judicial Magistrate P.W.2 Dahiwal. After Sadhna was taken to the hospital by the appellant and the neighbours immediately after the incident she had given the history to the doctor P.W.1 Medhekar to the effect that the burns had been caused to her due to kerosene stove as deposed to by P.W.1 Dr. Medhekar. Though the wife had not made any allegation against anybody causing burns to her person, doctor had informed the police, who arranged for the services of

the Special Judicial Magistrate for recording the statement of Sadhna. P.W.2 Subhash Dahiwal had gone to the said hospital at about 3 a.m. on 5/4/1992 for recording the statement of Sadhna. He enquired from the doctor, who was present there, about the condition of the patient and obtained his endorsement. He had recorded the statement in the presence of the doctor which is produced at Exh.15 on record. In the said statement the version given by Sadhna, which is incorporated in the judgment by the trial court, is as follows:

> "I was cooking the food on the stove. While I was picking up the utensils kept on the plank fixed high in the wall, the bottom portion of my saree caught fire from the flames of the stove and then the saree started burning. Therefore, I sustained the burn injuries. My husband extinguished the fire of my clothes. I sustained the burn injuries at about 10.30 p.m. I have no complaint."

9. The second statement of Sadhna was recorded on 8/4/1992. Pursuant to the requisition given by the police, the Special Judicial Magistrate Dahiwal P.W.2 went to the said hospital and after ascertaining from the doctor about the fitness of the patient to give

statement, recorded her statement (Exh.17) which is as follows:-

> "The statement given by me on 5/4/1992 is false. I am voluntarily giving the statement today which is true. My husband was suspecting my illicit relations with my brother-in-law with Ganesh Dhondiba Khule and on that count he was beating and harassing me. Annoyed with that I had poured kerosene on my person on 4/4/92 between 10.30 to 11 p.m. That time my husband threw on me burning match stick and thereby set fire to me. That I have the complaint against my husband."

10. After the aforesaid statement was recorded by the Special Judicial Magistrate, the Head Constable recorded a detailed statement of Sadhna, on the basis of which he registered the crime against the appellant for offences under Sections 498-A and 307 of IPC. The crime registered under Section 307 of IPC was converted into offence under Section 302 of IPC after Sadhna succumbed to her burn injuries on 1/6/1992. The question, therefore, is which of the aforesaid two versions, which are apparently contrary to each other, can be accepted by the court before considering the guilt of the accused. It is well settled that when there are two versions given by the patient, the court will have to find out which of the two contrary versions is true. It is common knowledge that such

instances arise mostly in the burning cases of wives. Examples of this kind are not rare. On the contrary such cases galore when the wife being under pressure or fear of her husband and in-laws, does not implicate her husband or other in-laws initially but gains courage to give correct version of the incident subsequently when her own relations are on the scene. One reason for giving the earlier statement in favour of the husband and in-laws even when her own relations are around is that burnt patients who are initially absolutely conscious and are not under the apprehension or expectation of death would not like to cause marriage to break by implicating the husband if she were to survive the burns. Some times this is done in the interest of children or even in her own interest to see that marriage is not disturbed.

11. This is a very peculiar case where the wife does not appear to have given the earliest version incorrectly out of any fear from her husband but she herself explained at the time of recording her statement on 8/4/1992 which is also corroborated by P.W.5 Geeta Redekar, the mother of Sadhna as to why she had made incorrect statement. Her mother has deposed that when she enquired with Sadhna in the

hospital Sadhna told her that because her elder daughter Trupti had slept in her house, appellant started quarrelling with Sadhna and started to go to bring his daughter back. It was night time and, therefore, with a view to see that appellant does not go to bring their daughter back Sadhna poured kerosene on her person in order to frighten the appellant. Thereupon the accused threw on her person a burning matchstick and set her on fire. She was further told by Sadhna that the accused had begged of Sadhna to pardon him and requested her to state that while cooking her clothes caught fire. She has also stated that appellant was suspecting that Sadhna was having illicit relationship with appellant's younger brother who was stated to be hardly 11 years old at the time of the marriage of the couple. Sadhna was married for a period of 8 years to the appellant at the time of the incident in question.

12. Apart from the fact that the explanation given by the mother of deceased Sadhna as to why the earlier statement was given exculpating the appellant-husband is probable and believable, it is important to note that the earlier version given by deceased Sadhna in her statement to the Special Judicial Magistrate

appears to be absolutely inconsistent with the facts and circumstances of the case. For instance, the spot panchanama Exh.26 which was drawn immediately on the following morning by the Head Constable Jagdale P.W.8 shows that at the place of incident apart from the stove there was a can of kerosene and more significantly the kerosene was found spread on the floor of the room where the incident had taken place. There was smell of kerosene also in that room. The said panchanama was drawn between 7 a.m. and 7.45 a.m. while the incident had taken place at about 11 O'clock in the previous night and her first statement Exh.15 was recorded by the Special Judicial Magistrate at about 3 a.m. Therefore, the spot panchanama was drawn without much loss of time and the things were in the same shape in the house as they were at the time of the occurrence of the incident as from the place of offence the burnt pieces of saree were also found lying in the room. The fact that kerosene was found spread in the room is consistent with the version given in the second dying declaration that the kerosene was poured on the person of deceased Sadhna and thereafter she was set on fire. At the time of giving second statement Exh.17 she has stated that the statement given by her on 5/4/1992 was false and she wanted to give true statement on that day i.e.

8/4/1992. If Sadhna had wanted to falsely implicate her husband, she could have very well stated that kerosene was also poured on her person by her husband. But being on a hospital bed which could have possibly resulted in her death she did not want to speak lie or exaggerate the version by making false statement against her husband and, therefore, she had quite candidly and honestly admitted that she had poured kerosene on her person herself and her husband threw on her a burning matchstick and set her on fire. She has also mentioned in the second statement about the motive. Her husband was suspecting that she had illicit relations with her brother-in-law Ganesh Khule who is the younger brother of the appellant. She has further stated that because of the said suspicion appellant used to beat her and harass her.

13. It is settled law that in a case of this kind where there are two versions given by wife as to the cause of her burns, the court has to find out which version is true and then only decide whether the accused is guilty or not of burning his wife. In the case of Nallam Veera Stayanandam and ors. vs. Public Prosecutor, High Court of A.P. reported in **(2004) 10 SCC 769** it has been held by the apex court that in the

case of multiple dying declarations each dying declaration will have to be considered independently on its own merit as to its evidentiary value and one cannot be rejected because of the contents of the other. In such cases it is the duty of the court to consider each of them in its correct perspective and satisfy itself which one of them reflects the true state of affairs.

14. As observed earlier her second version appears to be consistent with the spot panchanama which was drawn immediately next morning when no crime was registered against the appellant and the burning of Sadhna was registered as an accidental case on the basis of her own earlier exculpatory statement. Her version is not only corroborated by her mother but also by the neighbour. It is pertinent to note that not only her mother but her brother and sister had reached the hospital immediately after the incident as mother was staying in the neighbourhood and she was immediately informed by one of her friends. If the mother and her bother or sister had wanted to tutor her that could have been done even before the first statement of Sadhna was recorded by the Special Judicial Magistrate at 3 a.m. on that night. Her

mother Geeta P.W.5 had gone to "Om" Clinic after hearing about burning of her daughter where Sadhna was taken initially by the appellant. Said witness had accompanied Sadhna when she was taken to Ratna hospital from "Om" Clinic.

15. The statement given in the second dying declaration was also corroborated by neighbour Kishor Khedekar who was examined as P.W.3. This witness was a tenant of the appellant and was residing in the same house where the appellant with his family was residing. While the appellant with his family was residing in the rear room which was kitchen room and larger in size admeasuring 10 x 10 ft., this witness was residing in the front room which was having area of 8 x 10 ft. There was partition wall between these two rooms upto the height of 9 ft. only and the portion above the partition wall was open upto the roof and, therefore, according to this witness, he heard the talk of the appellant with his wife from his room which was quite possible. He has deposed that he had gone to sleep at about 9 p.m. but at 11 p.m. he heard the quarrel between Sadhna and accused. Thereafter noise of quarrel increased and he saw the flames in his house and Sadhna called him for help. That is how he went to their house when 2-3 other

persons had already arrived there. Thus, he corroborates the version of the deceased in her second statement where she states that because of suspicion the appellant was beating and harassing her and annoyed with that she had poured kerosene on her person. There is absolutely no corroboration from the facts and circumstances which are brought on record to the earlier version given by Sadhna that she caught fire while cooking food on the stove. It is significant to note that if she had caught fire accidentally there was no reason for Sadhna to call her neighbour for help when her husband was present there. She would call her neighbour for help only if husband had set her on fire as her husband was not expected to help her.

16. It is further important to bear in mind that 10.30 p.m. was not the time for cooking food, especially in the place where the appellant and his wife were residing. Their own neighbour who was a tenant in the adjoining room had gone to bed at 9 p.m. One can understand that some time there is delay in taking dinner but normally that was not the time at least for cooking the food in that region. Moreover,

the spot panchanama Exh.26 also does not indicate that there were any utensils with cooked food found at the time of spot panchanama which was drawn at about 7 a.m. in the morning. Therefore, the spot panchanama does not support the version given in the earlier statement that she was cooking food on the stove and the bottom of her saree caught fire from the flames of the stove while she was picking up the utensils kept on the plank fixed on some height in the wall. No utensils with food were found at the time of drawing spot panchanama. If there had been cooked food in the room the appellant would not have removed that food before even spot panchanama was drawn by the police. He must be in the hospital for most part of the night or until Sadhna's first statement was recorded by the Special Judicial Magistrate at 3 a.m. on that night.

17. Thus there is absolutely no corroboration to the earlier version given by the patient Sadhna to the Special Judicial Magistrate at 3 a.m. on the night of the incident from either the spot panchanama or any other circumstance on record. On the contrary, in the spot panchanama there is mention of kerosene having been spread in the room and absence of cooked food or half cooked food in the utensils in the room where the

incident took place are the circumstances which are consistent with the second statement of deceased Sadhna. Immediately after the recording of the second statement by the Special Judicial Magistrate implicating the appellant, the Head Constable had recorded her statement which is produced on record at Exh.27. In that statement she has stated that when her husband wanted to go to her mother's place to bring their daughter, with a view to prevent him from going there, she poured kerosene on her person and the appellant seizing the opportunity threw burning matchstick and set her on fire.

18. No doubt, the panch to the spot panchanama had turned hostile and did not support the prosecution. But it is well settled that unless the evidence of the police officer is found to be unreliable, the said evidence can be believed to prove the spot panchanama. In the case of State, Govt. of NCT of Delhi vs. Sunil and anr. reported in **(2001) 1 SCC 652** Supreme Court has held that the recovery at the instance of the accused should ordinarily be believed on the evidence of Police Officer and it is for the accused to show that such evidence is unreliable and mere absence of independent witness is not sufficient to

discard the evidence of the Investigating Officer. In this case the version of police officer is supported by the contemporaneous document like spot panchanama which was drawn at a time when no crime was even registered against the appellant. The spot panchanama was drawn at the earliest opportunity i.e. in the morning at 7 O'clock following the night of the incident. Moreover, the Head Constable who had drawn the panchanama had no reason to falsely prepare the spot panchanama at a time when deceased Sadhna had given statement which was exculpatory of the appellant and no crime was registered.

19. In the memo of appeal one of the grounds taken is that oral dying declaration made to mother is totally inconsistent with the dying declaration and, therefore, the dying declaration cannot be considered as truthful. That is not the case here. P.W.5 mother of Sadhna has stated that she was told by Sadhna that her husband was suspecting that she had illicit relations with her brother-in-law Ganesh i.e. the younger brother of the appellant which is mentioned in the second dying declaration which is quoted hereinabove. The mother of Sadhna has further deposed

that Sadhna told her that on the night of the incident appellant quarrelled because their elder daughter was sent to her house for sleeping that night and when he wanted to go to bring their daughter back, Sadhna poured kerosene on her person with a view to frighten the appellant and prevent him from going to her mother's place to bring back their daughter Trupti. This, though does not find place in the dying declaration recorded by the Special Judicial Magistrate, is mentioned clearly in the detailed statement recorded by the Head Constable immediately after the Special Judicial Magistrate recorded the dying declaration Exh.17.

20. The other ground mentioned in the memo of appeal is that dying declaration cannot be truthful because the mother of the deceased who was with her had insisted recording of the second dying declaration. First of all the mother of Sadhna was there with her daughter even before recording of the first dying declaration. Secondly, she has deposed in her cross-examination that she knew that there used to be always quarrel between Sadhna and the accused and, therefore, she had enquired with her again and again as she wanted to know the real cause of her burning and thereafter Sadhna told her how in fact she caught

fire. Sadhna herself must be feeling guilty for not having told the truth to the Special Judicial Magistrate on the earlier occasion and, therefore, she must have thought of making another statement before the Magistrate. As observed earlier, her second statement stands corroborated by the circumstances on record and, therefore, appears to be truthful. As against that not only there is no corroboration to the first version of accidental fire but said version is inconsistent with the facts and other circumstances on record.

21. Even the second dying declaration Exh.17 was recorded by the same Special Judicial Magistrate after he had ascertained from the Medical Officer present in the hospital about the consciousness and fitness of Sadhna to make a statement and accordingly the endorsement of Dr. Jyoti Bhagwat P.W.7 had been obtained. The endorsement has been obtained from the doctor before and after recording the dying declaration Exh.17. The said doctor has made an endorsement that patient was in a state to give a verbal statement and that she was conscious. The said doctor has been examined in the court. She has stated in her deposition that that time Sadhna was fully conscious and in a position to talk and she was

present while the statement was being recorded by the Magistrate. She has proved her endorsement on the said dying declaration. Even the Special Judicial Magistrate has deposed that the said statement was recorded in the presence of the doctor. The said endorsement was made, as per the Special Judicial Magistrate, after the doctor examined the patient. Thus, the dying declaration Exh.17 is also fully supported by Dr. Jyoti Bhagwat P.W.7 in whose presence the said statement was recorded.

22. The prosecution has also examined Dr. Sonekar P.W.10 who had performed autopsy on the dead body. He has produced on record post mortem notes at Exh.34. According to him the percentage of burn injuries was 60% to 65% which were sufficient in the ordinary course of nature to cause death. She has further deposed that because of the burn injuries there was infection spread over the body and the cause of death was toxaemia. Even in the post mortem report the cause of death has been given as shock with toxaemia due to burns. The post mortem was performed on 1/6/1992 in Sassoon Hospital, Pune.

23. The second dying declaration is thus corroborated by spot panchanama and the evidence of not only mother of Sadhna to whom she had made oral dying declaration but also by the fact that deceased had called for help of her neighbour Kishor P.W.3 though her husband was present, which is consistent only with her husband setting her on fire. The dying declaration is also supported by Medical Officer in whose presence dying declaration was recorded. Motive is also proved. Since in the first dying declaration appellant was not implicated there was no question of making reference to the quarrel and the appellant suspecting her illicit relationship with his own much younger brother. Moreover, if the deceased had wanted to falsely implicate the appellant she would not have candidly stated that she had herself poured kerosene on her person.

24. From the aforesaid discussion there is no doubt left that Sadhna, the wife of the appellant, had died because of the burn injuries which were caused by the appellant by throwing burning matchstick on her person when he saw her pouring kerosene on her person. As per the medical report Sadhna had died because of the said burn injuries. The question, therefore, is

what offence the appellant can be said to have committed vis-a-vis his wife Sadhna who died due to burn injuries.

25. From the evidence on record and in particular the dying declaration Exh.17, it is clear that at the relevant time there was quarrel between the husband and wife over the issue of sending their elder daughter Trupti to sleep in the house of Sadhna's mother P.W.5 Geeta Redekar. The appellant used to quarrel with his wife because he was suspecting that she had illicit relationship with his younger brother Ganesh. Before he had thrown a burning matchstick on her person, as per the dying declaration Exh.17 itself, she had herself poured kerosene on her person. The appellant threw a burning matchstick only after Sadhna herself poured kerosene on her person. This only indicates that had Sadhna not poured kerosene on her person, the appellant would not have set her on fire because as per her statement recorded by Head Constable, corroborated by the deposition of her mother P.W.5 Geeta Redekar, Sadhna had poured kerosene on her person with a view to prevent the appellant from going to her mother's place to bring back their daughter Trupti. In other words, the appellant was

not otherwise inclined to murder Sadhna or set her ablaze. He seems to have been suddenly provoked to set her on fire when his wife made a drama of pouring kerosene on herself to threaten her husband but not taking the next step of setting herself on fire. In our view the said offence was committed by the accused due to sudden provocation caused by the conduct of the wife herself attracting Exception 1 to Section 300 of I.P.C. and, therefore, the offence committed by him could be culpable homicide not amounting to murder and, therefore, punishable under Section 304 of IPC. Naturally, when a burning matchstick was thrown on the person on which kerosene is sprinkled the intention is obvious. The appellant had thrown burning matchstick on his wife with an intention to cause her death.

26. The cases of this kind where the wives have been burnt in the matrimonial house are on the increase. On smallest pretext the wives are set ablaze by either the husband and/or other in-laws. To prevent or discourage such incidents deterrent punishment is undoubtedly desirable. But in this case considering that the provocation was caused by the conduct of the victim herself and the appellant had begged of her to pardon him after extinguishing fire from her person and in the process himself

received burn injuries, though superficial, on his hand and face and the appellant has children from the deceased to look after, we are inclined not to impose sterner punishment. We are of the view that in the facts and circumstances of this case sentence of RI for five years and a fine of Rs.1000/- in default to undergo further imprisonment for four months for offence under Section 304 Part-I of IPC would meet the ends of justice.

27. In the result, this appeal is partly allowed. The conviction of the appellant for offence under Section 302 of IPC and sentence awarded to him by the trial court is set aside and instead he is convicted for offence under Section 304 of IPC and sentenced to RI for five years and to pay a fine of Rs.1000/- in default to undergo further imprisonment for four months. The appellant shall be entitled for set off under Section 428 of Cr.P.C. The appellant shall surrender to his bail forthwith.

(S.S. Parkar, J.)

(Anoop V. Mohta,J.)